

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Francisco Perez

Petitioner,

v.

City of Chicago Police Board and The
Superintendent of Chicago Police

Respondents.

Case No. 17 CH 4098

Calendar 2
Courtroom 2601

Judge Raymond W. Mitchell

ORDER

The case is before the Court on administrative review in which Petitioner Francisco Perez seeks to set aside a decision of the Chicago Police Board finding cause for him to be discharged.

I.

While working security for a restaurant on Ashland Avenue in Chicago, Officer Perez was involved in a late night shootout. Shortly after closing, shots were fired from a car driving by the restaurant. Perez returned fire and fired a total of 16 shots. One of Perez's shots struck a bystander.

The Superintendent subsequently charged Perez with violations of Rules 2, 10, and 14. A hearing was held on April 5 and 20, 2016, and the case was then submitted to the Police Board. On June 6, 2016, the Board issued an order reversing five evidentiary rulings favorable to Perez, and directing the hearing officer to resume the evidentiary hearing. The hearing resumed on October 18 and concluded on October 24, 2016. The hearing officer submitted the case to the Police Board, which found Perez violated Rules 2 and 10 (not Rule 14), and the Board found cause for Perez's discharge.

II.

The powers of an administrative agency are limited to those expressly given to the agency by statute. *Lake County Board of Review v. Property Tax Appeal Board*, 119 Ill. 2d 419, 427 (1988). "Agency action which exceeds its authority is void." *Chemed Corp. v. State*, 186 Ill. App. 3d 402, 410 (4th Dist. 1989).

The scope of review of an agency's decision to discharge a public employee requires a two-step analysis. *Walsh v. Board of Fire & Police Commissioners*, 96 Ill.

2d 101, 105 (1983). "First, the court must determine if the agency's findings of fact are contrary to the manifest weight of the evidence." *Caliendo v. Martin*, 250 Ill. App. 3d 409, 415, 620 N.E.2d 1318, 1323 (1st Dist. 1993). If there is any evidence in the record that fairly supports the findings of the agency, the findings must be sustained on judicial review. *O'Boyle v. Personnel Board of Chicago*, 119 Ill. App. 3d 648, 654 (1st Dist. 1983). "Second, it must determine if the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge exists." *Caliendo*, 250 Ill. App. 3d at 415.

The Petitioner's principal contention is that the Police Board exceeded its authority when it overruled the hearing officer's evidentiary rulings and directed the hearing to resume. While an agency's power is limited to those enumerated in the statute that creates it, Illinois courts have recognized this power includes by implication that which is necessary to achieve the aims and purpose of the agency. *O'Grady v. Cook County Sheriff's Merit Bd.*, 260 Ill. App. 3d 529, 534-35 (1st Dist. 1994). Here the Police Board is vested with the power to "hear disciplinary actions ...for removal or discharge involving officers and employees of the police department..." Chi. Mun. Code 2-84-0303. The Municipal Code and the Police Board's Rules of Procedure contemplate that evidence may be received by a hearing officer, but the Board alone retains the authority discipline police officers. Indeed, the Board is not bound by a hearing officer's credibility determination, *Caliendo v. Martin*, 250 Ill. App. 3d 409, 418 (1st Dist. 1993), or any other determination by a hearing officer. Further, the Board's Rules of Procedure expressly provide that a hearing officer's prehearing rulings are subject to review by the Board. Rules of Procedure, II.B.

The Petitioner argues that there is a tension between the Municipal Code that prohibits continuances once a hearing has been commenced and the Board's action here in ordering the hearing to resume. But no party here sought a continuance, but rather the hearing officer simply excluded evidence the Board later deemed admissible. Tasked with making the ultimate decision in disciplinary cases, the Board has to the authority to ensure that its decision is based on a fully developed evidentiary record.

Nor is there any indication that the Board's action was arbitrary or capricious. As a result of the Board's action in ordering the hearing to resume, Perez lost the benefit of some favorable evidentiary rulings. But that is not proof of bias. Further, there was no unfair prejudice to Perez when the hearing resumed: he participated through counsel, confronted witnesses, presented expert testimony and offered closing arguments.

Finally, Perez argues that the Board's determination was against the manifest weight of the evidence. The Board found Perez guilty of violating Rule 2 (any action that impedes the Department's efforts to achieve its goals or brings

discredit upon the Department) and Rule 10 (inattention to duty). Perez challenges the Board's reliance on a video recording of the incident. It is not the court's role, however, to reweigh evidence on administrative review. Further, the video was corroborated by the testimony of witnesses. The record, taken as a whole, amply supports the Board's finding that Perez recklessly fired his weapon in a manner that unnecessarily endangered a bystander.

III.

For all these reasons, the decision of the Police Board is AFFIRMED.

ENTERED,



Judge Raymond W. Mitchell, No. 1992

Judge Raymond W. Mitchell

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